

SUPREME COURT OF INDIA

Upendra Baxi

Vs

State of Uttar Pradesh

(P.N.Bhagwati and R.B.Misra, JJ.)

08.05.1981

ORDER

P.N.Bhagwati, J.

1. Upon hearing counsel the Court made the Following Order :

2. Mr. R. K. Bhatt, learned advocate appearing on behalf of the respondent wants time to file an affidavit of reply to the various averments made in the report of the Chief Judicial Magistrate on the two occasions on which he visited the protective home and also in regard to the amendments made in the report of the District Judge as well as the Additional District Judge, Agra. We could, therefore, adjourn the hearing of the writ petition to July 20, 1981 but in the meanwhile there are certain emergent matters in respect of which directions are required to be given and we must, therefore, proceed to give necessary directions.

3. It appears from the report of the District Additional District Judge and the Chief Judicial Magistrate that the 19 inmates whose particulars are set out in paragraph 17 of the memorandum of Dr. Sodhi and who were either insane or of damaged mind were discharged from the protective home between April 16, 1981 and April 27, 1981. It is very distressing that these 19 inmates who were obviously not in a position to take care of themselves should have been discharged from protective home and one would like to know whether they are discharged or evicted in accordance with the provisions of they are discharged or evicted in accordance with the provision of Rule 37 of the Rules framed under Suppression of Immoral Traffic in Women and Girls Act. Rule 37 requires that the State Government may at any time order any inmate of the protective home to be discharged either absolutely or on such conditions as they approve and would, therefore, seem that only when an appropriate order is made by the State Government that an inmate can be discharged from a protective home. One

would, therefore, like to know from the State Government as to whether any order was made by the State Government or any other officer to whom this power might have been delegated for discharge of these 19 inmates. We would also like to know from the Superintendent, Protective Home, as to what was the reason for which these 19 inmates were discharged and to whose custody they were handed over on discharge.

4. So far as Lalita is concerned we find that an order was made by the Additional District Magistrate on December 18, 1980 transferring her to the mental home because she was admitted as mentally retarded person and was not in proper mental condition but even though the order was made on December 18, 1980 she was not transferred to the mental home by the Superintendent because her mother was willing to take her home though she had financial difficulties in coming down to Agra for the purpose of taking her. It is rather unfortunate that Lalita should have remained in the protective home for a period of more than five months after the order passed by the Additional District Magistrate, Agra, even if Dr. Sodhi, who is appearing before us states that the Association for Social Health in India, was willing to provide necessary funds for the mother of Lalita to come down to Agra for the purpose of giving company to her daughter when she was in mental home.

5. The provision of funds will ultimately abide the directions of this court at the time of final disposal of the writ petition as to who should ultimately bear the cost of such provisions. We would direct that pursuant to the order made by the District Magistrate, Agra on December 18, 1980 Lalita shall be transferred provided the mental home is prepared to admit her.

6. We are informed that there are number of minor girls in the protective home. It is not at all desirable that minor girls between the ages of 7 and 18 should be allowed to continue to remain in the protective home in the company of hardened prostitutes or women who have been rescued from the brothels and women suffering diseases. Their proper place would be only in Children's Homes and we would, therefore, direct the State Government immediately to ensure that minors are transferred to children's Home in Agra.

7. Both the reports of Chief Judicial Magistrate clearly show that there are two underground cellars with little ventilation where the inmates are housed. There can be not doubt that cellars are hardly a place where any human being should be required to stay day after day and month after month. The Chief Judicial Magistrate should visit the protective home on the second occasion pursuant to our order. As reported, there

are three rooms along with verandah available for the purpose of housing the inmates and we would, therefore, require the Superintendent, protective Home to see that as far as possible no inmate is housed in the cellars except when the verandahs after putting the thick curtains are also made available along with three other rooms for the purpose of accommodating the inmates.

8. We are informed that there is a Board of visitors which at present consists only of officials and there is no non-official representation on the same. This is not admitted on behalf of the petitioner but we would direct that since Rule 40, sub-rule (2) requires that there must be at least some non-official representation on the Board of Visitors, the State Government will take necessary steps for the purpose of ensuring non-official representation on the Board of Visitors. We would also like the present Board of Visitors to produce before us at the next bearing of the writ petition the minutes of the meetings held by them during the year 1980-1981 because sub-rule (5) of Rule 40 requires that the Board shall hold a formal meeting once in three months and we would like to know what where the proceedings of the meetings which must have been held pursuant to this sub-rule and what was the business transacted at these meetings. We have already appointed a panel of doctors for the purpose of carrying out medical check-up of the inmates of the protective home. It appears that some work has been done by the panel but they have not been able to complete the work assigned to them because our order constituting the panel did not reach them until after some time. We, therefore, extend the time for the panel to carry out the medical check-up of inmates and submit a report up to May 31, 1981. Since there may be difficulty in organising a meeting of the panel of doctor them it is necessary that there should be a convenor of the panel and we therefore appoint Dr. Sodhi as convenor of the panel. We would also direct the Superintendent of the Protective Home to cooperate with to produce the inmates for medical check-up in the medical college as and when required by the panel and also place at the disposal of the panel such records in regard to the medical check-up as may be required by them.

9. Whenever any inmate of the protective home is to be discharged, it shall be done in accordance with the provisions of Rule 37 and information of the intended discharge shall be given by the Superintendent of the Protective Home to the Chief Judicial Magistrate, Agra, at least five days in advance.

10. The State Government will also put forward a scheme for vocational training and rehabilitation of inmates of the protective home and will also take whatever steps are necessary for the purpose of obtaining the consent of the landlord of the premises to the construction of at least two more latrines and two bathrooms because we find

from both the reports of the Chief Judicial Magistrate that there is only one latrine for more than 15 inmates and there is no bathroom at all with the result that inmates have either to go without bath for days or they may have to take their bath in the open which is shocking state of affairs. We would also in the meanwhile direct the State Government to put up temporary bathrooms in order to enable the inmates to have a bath as also two temporary latrines and provide facilities for water by putting up water taps or drawing water from the water taps and carrying into the bathrooms and the latrines.